

Supreme Court of the United States

OCTOBER TERM, 1944

JOHN W. HAYS and SARAH R. HAYS,

Petitioners,

vs.

CATHERINE FARRINGTON, PARKER M. WOOD, WILLIAM L. BECKFOLD, WALTER M. WARREN and LYMAN B. WARREN,

Respondents.

Petition for Writ of Certiorari to  
Supreme Court of Missouri

JOHN W. HAYS and

SARAH R. HAYS, Petitioners,

by GEO. L. VAUGHN,

205 Market Street, St. Louis 8, Mo.

CHARLES H. HOUTSON,

Harvard University, Washington, D. C.

144281

Attorneys



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*In the*  
Supreme Court of the United States

OCTOBER TERM, 1944

JOHN W. HAYS and SARAH R. HAYS,

*vs.*

*Petitioners,*

CATHERINE FARRINGTON, PARKER M. WOOD, WIL-  
LIAM L. BECKTOLD, WALTER M. WARREN and  
LYMAN E. WARREN,

*Respondents.*

No. ....

*Petition for Writ of Certiorari to  
Supreme Court of Missouri*

**PETITION FOR CERTIORARI.**

To the Honorable Supreme Court of the United States:

Your petitioners, John W. Hays and Sarah R. Hays,  
respectfully allege:

## A.

**Summary Statement of the Matter Involved.**

Petitioners, citizens and taxpayers of Missouri, residents in the City of St. Louis, were the owners by the entirety of the undivided and unsurveyed western two and one-half acres of a certain tract of land, situated on Big Bend Road, in the town of Kirkwood, St. Louis County, in said state on the 20th day of December, 1940, by reason of a certain written agreement set forth on pages 137 and 138 of the Record in Cause No. 38911 of the Supreme Court of Missouri and entitled Catherine Farrington, Parker M. Wood, William L. Bechtold, Walter M. Warren and Lyman E. Warren, respondents, v. John W. Hays and Sarah R. Hays, appellants; that Lloyal M. Burton and Rosalyn R. Burton, his wife, were on said date the owners by the entirety of the eastern two and one-half acres of said tract of land by reason of the afore-said written agreement; that on said 20th day of December the legal title to the whole of said tract of land was in the name of one Marie Halbrecht, and on the 6th day of January, 1941, said Marie Halbrecht, at the direction of petitioner, John W. Hays, inserted the names of said Lloyal M. Burton and Rosalyn R. Burton, his wife, in a blank deed which she had executed and delivered to the petitioner, John W. Hays, on the 16th day of December, 1940, the date when the legal title to said property was, by deed from the original owners thereof, first placed in her name. She delivered said blank deed to said petitioner, pursuant to a written assignment theretofore executed and signed by one Harry J. Gannon and said Marie Halbrecht, conveying the interest of said Harry J. Gannon in said tract of land, to petitioner, John W. Hays, who was already the beneficial owner of a one-half un-



divided interest therein; but said deed was not placed of record until the morning of February 3, 1941.

That on the 3rd day of February, 1941, the other respondents herein, acting through their duly authorized agents, entered into a written contract with said Harry J. Gannon and Marie Halbrecht for the purchase of said tract of land, in the name of respondent, Catherine Farrington, well knowing at the said time through information theretofore given to their said agents that said Marie Halbrecht was not the real owner of said lands and that said Harry J. Gannon and said Marie Halbrecht had no authority to make and sign said contract; and, at the time of the signing of said purchase or earnest money contract, all of said respondents, through other facts known to their said agents, could have learned by reasonable inquiry that the petitioners herein and said Lloyal M. Burton and his wife were the real and true owners of said lands, but neglected and failed to make inquiry concerning the owners of said property. The above named respondents brought suit against these petitioners, said Marie Halbrecht and said Lloyal M. Burton and Rosalyn R. Burton, in the Circuit Court of St. Louis County, Missouri, asking specific performance of said earnest money contract executed by said Marie Halbrecht and Harry J. Gannon on the 3rd day of February, 1941, pleading equitable estoppel against the defendants, by reason of failure to place said deed of record prior to February 3, 1941. To the Second Amended Petition of the respondents, on which said cause was heard, the petitioners herein and said Burtons, each and all pleaded, among other defenses, actual knowledge on the part of the plaintiffs, and notice sufficient to put them on inquiry and neglect to make said inquiry, lack of authority in said Marie Halbrecht and Harry J. Gannon to enter into said contract,

and further pleaded the statute of frauds contained in the laws of Missouri (Section 3354, Rev. Stat. of Missouri 1939).

The decree of the said Circuit Court, rendered on the 2nd day of August, 1943, upheld said contract between said Lloyal M. Burton and petitioner, John W. Hays, in so far as the same related to the interest of said Burton and his wife in said land, and rendered a judgment in their favor, and against the respondents herein, awarding said Burton and his wife their portion of said land, in accordance therewith, but refused to uphold said contract in so far as the same had regard to the rights and interests of the petitioners in said land, and decreed specific performance against petitioners and vested title to the western two and one-half acres of land and ordered the same transferred to respondent, Catherine Farrington, upon the payment into court for the use and benefit of petitioner, John W. Hays, the sum of \$442.04, and assessed the cost in said cause against petitioner, John W. Hays. And the Court, in said decree, denied the petitioner, Sarah R. Hays, any right or interest in and to said property, and refused to uphold the rights of the petitioners herein as owners of an equitable estate by the entirety in said property by reason of said contract between petitioner, John W. Hays, and said Lloyal M. Burton.

That the evidence adduced at said trial showed that petitioner, Sarah R. Hays, was in the same circumstances and claimed her rights in said property through the same contract as that on which the Court granted affirmative relief to said Burtons, except that petitioner, Sarah R. Hays, had no knowledge of the existence of said contract or of the negotiations carried on for the purchase of said lands, until after the action was brought.

Each of the said defendants, except Marie Halbrecht, duly filed motions for a new trial, but only the petitioners herein appealed from the decision of said Circuit Court in overruling said motions. That these petitioners filed a joint motion for a new trial (Rec., pp. 278 to 282, incl.), in which said motion the following paragraphs appear:

Par. 7 (Rec., pp. 280, 281).

Par. 10 (Rec., p. 281).

Par. 16 (Rec., p. 282).

In which said paragraphs petitioners challenged the denial of their rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States to the equal protection of the laws, and their being denied due process of law, contrary to said section and also the Fifth Amendment to the Constitution of the United States.

Said motion for new trial was overruled by the Circuit Court without written opinion (Rec., p. 282). An appeal to the Supreme Court of Missouri was duly prayed for by these petitioners and was duly allowed (Rec., pp. 282, 283).

This case is brought before this Court for review on the claim of the petitioners that their property rights as beneficiaries under the agreement signed by petitioner, John W. Hays, and Lloyal M. Burton, December 20, 1940, have been denied to them by the State of Missouri, while the same or similar rights thereunder were upheld and confirmed to the other beneficiaries of said agreement, although petitioners and said other beneficiaries were in every way in similar circumstances regarding said rights; and petitioners claim that the State of Missouri, by said actions, has denied to them the equal protection of the laws, and has deprived petitioners of their property with-

out due process of law, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States and contrary to the Fifth Amendment thereof.

**B.**

**Reasons Relied on for the Allowance of the Writ.**

1. The State of Missouri denied petitioners the equal protection of the laws guaranteed to them by Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that:

(a) The right of the petitioner, Sarah R. Hays, under the terms of the contract dated December 20, 1940, became a vested right upon its execution, delivery to and acceptance by her trustee, Lloyal M. Burton. From that time on she was the equitable owner of an estate by the entirety in the western two and one-half acres of the tract of land described in said contract, together with the improvements thereon.

(b) Petitioner, John W. Hays, having parted with his sole right in said lands and having conferred on his wife an estate by the entirety by executing and delivering said agreement to Lloyal M. Burton, as trustee for the beneficiaries thereunder, was unable to bind petitioner, Sarah R. Hays, by any act of his not concurred in, or ratified by her.

(c) Said agreement created an irrevocable trust upon delivery to and acceptance by the trustee therein named, and the failure of the Court to uphold the same as to any beneficiary who had not become estopped by his or her conduct from asserting his right thereunder, while upholding and enforcing said agreement as to other beneficiaries similarly situated, was a denial of the equal pro-

tection of the laws to the beneficiaries whose rights were so denied under the same by the Court.

(d) Petitioners challenged the denial of their federal rights in both the Circuit Court and the Supreme Court of Missouri at the earliest possible moment and kept the challenge alive throughout the proceedings, but neither Court gave opinion concerning said federal rights, although it was necessary for the Circuit Court to consider the same in overruling petitioners' motion for a new trial, and for the Supreme Court of Missouri to pass on the same under the assignment of errors and argument before it.

2. The State of Missouri deprived petitioners of their property without due process of law, as guaranteed to them by said section of the Fourteenth Amendment and by the Fifth Amendment to the Constitution of the United States, by failing to apply the statute of frauds of Missouri and the well-settled principles of equity in this state to the facts and circumstances surrounding the property rights of petitioners, while applying said statute and said principles to the other beneficiaries under said trust agreement, who were similarly situated.

In support of the foregoing grounds of application your petitioners submit the accompanying Brief setting forth in detail the precise facts and arguments applicable thereto.

Wherefore, your petitioners pray that the Court, pursuant to United States Judicial Code, Section 237b, as amended by Act of February 13, 1925, 43 Stat. 973, issue a writ of certiorari to review the decree and judgment of the Supreme Court of Missouri in affirming the decree and judgment of the Circuit Court of St. Louis County,

Missouri, decreeing specific performance and divesting the property of the petitioners out of them and vesting the same in Catherine Farrington as aforesaid.

All of which is herewith respectfully submitted this 4th day of December, 1944.

JOHN W. HAYS and  
SARAH R. HAYS,

Petitioners.

by GEO. L. VAUGHN,

CHARLES H. HOUSTON,

Attorneys.







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LIAM L. BECKTOLD, WALTER M. WARREN and		
LYMAN E. WARREN.		

*Petition for Writ of Certiorari to  
Supreme Court of Missouri*

**BRIEF IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI.**

**I.**

**Opinion of the Court Below.**

The opinion has not yet been officially reported. It appears in 182 S. W. (2d) 186 (advance sheet), and pages 292 to 304, inclusive, of the Record. An application for rehearing of the opinion and to transfer the cause to the court en banc was denied without opinion.

## II.

**Jurisdiction.**

1. The statutory provision is Judicial Code, Section 237b, as amended by Act of February 13, 1925, 43 Stat. 937 (U. S. C. tit. 28, section 344b).

2. The date of the judgment is July 3, 1944, on which date the Missouri Supreme Court affirmed (Rec., p. 304). A motion for rehearing and for transfer to the court en banc was duly filed (Sup. Rec., p. j) and was overruled September 5, 1944 (Rec., pp. 305, 306).

3. That the nature of the case and the rulings below bring the case within the jurisdictional provisions of Section 237b, *supra*, appears from the following.

## III.

**Statement of the Case.**

In this case plaintiffs below sought specific performance of an earnest money contract entered into on the 3rd day of February, 1941, wherein the property in question was attempted to be sold to Catherine Farrington, one of the plaintiffs below, and a "straw party" for the other plaintiffs. The contract was signed by defendant below, Marie Halbrecht, who signed it as "record owner," and by Harry J. Gannon, who signed as "agent for the owner."

Prior to signing said earnest money contract said Harry J. Gannon had disposed of all right and interest which he had in said property to petitioner, John W. Hays, for a valuable consideration and had transferred the same by written assignment on the earnest money contract between Marie Halbrecht and James Sentenne and wife (R. p. 116 and Exhibit C, opposite p. 116) Marie Halbrecht

also signed said assignment, said contract having in it a provision reading as follows: "Deed to be made to Marie Halbrecht or assigns."

On January 6, 1941, Marie Halbrecht, at the direction of petitioner, John W. Hays, inserted the names of Lloyal M. Burton and Rosalyn R. Burton, his wife, in a deed which she gave to petitioner, John W. Hays, on December 16, 1940, when she received the deed to the property in question from Sentenne and wife. After their names had been inserted in said deed, the same was taken to the Burtons by petitioner Hays and they returned it to him with instructions to put it of record.

The inserting of the name of Burton and his wife in said deed was directed by petitioner, John W. Hays, in compliance with an agreement signed by him and said Lloyal M. Burton on the 20th day of December, 1940, wherein it was provided that Burton and his wife should take title to the entire tract of land and hold the same until it should be surveyed and then deed the western two and one-half acres thereof to petitioners, as husband and wife, and retain the eastern two and one-half acres of said land as their own, as husband and wife. The cumbances, taxes and upkeep on or accruing against said land were to be paid equally by the parties (R. pp. 137, 138). Mrs. Burton on said 20th day of December paid petitioner, John W. Hays, the sum of \$249.70 as part purchase money on the property (R. p. 140).

The claim of federal constitutional rights was specifically set up in a motion for a new trial duly filed in the Circuit Court of St. Louis County, Missouri, after the trial Court had upheld the contract between Burton and Hays, so far as the property rights of Burton and his wife were concerned, but had denied the same rights to the petitioners under said contract and decreed specific performance against them under similar circumstances to

those obtaining with reference to Burton and his wife, the other beneficiaries thereunder. Said claim to federal rights on the part of petitioners is contained in numbered paragraphs 7, 10 and 16 of said Motion for a New Trial (R. pp. 280-282), and states that the Court denied the petitioners the equal protection of the laws and deprives petitioners of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, and contrary to the Fifth Amendment thereto; and further charges that the decree of the Court nullifies the Statute of Frauds of Missouri.

The claim of federal constitutional rights was first specifically set up in the motion for a new trial filed by petitioners (Rec., pp. 278 to 282) and renewed at every stage of the case (Rec., pp. 289 to 291). The trial Court rendered its decree and overruled said motion for a new trial without opinion against the rights claimed (Rec., pp. 271-278). On appeal the Supreme Court of Missouri, although it was bound to consider and pass upon the claim to federal rights which were again set up in the assignment of errors, Brief and oral argument, in order to render its opinion in the case, did not mention said claimed federal rights in its opinion (Rec., pp. 292-304).

The federal right claimed is: (a) That the equal protection of the laws was denied to petitioners in that their vested rights to property under an executed trust agreement (Rec., pp. 137, 138), creating an equitable estate, and naming petitioners as beneficiaries thereunder, was held by the Court to be void and of no effect so far as these petitioners are concerned, while the identical rights of other beneficiaries thereunder were upheld, under similar circumstances, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States; and (b) That petitioners were deprived of their

property without due process of law, contrary to said Section 1 of the Fourteenth Amendment, and to the Fifth Amendment to said Constitution, and contrary to the Constitution of Missouri, Section 30 of Article II, and contrary to the statute of frauds of Missouri, and of the well-settled equity rules of law sanctioned by the highest courts of Missouri for many years; but that said statutes and said rules of equity were applied to the rights of other beneficiaries under said trust agreement, and said constitutional rights of said other beneficiaries were safeguarded under the same terms of said agreement, and under circumstances similar to those of petitioners.

Petitioners also charge that they were thus discriminated against because the purpose of said action was to prevent people of the colored race, of which petitioners are members, from living in property along said Big Bend Road, opposite Oakhill Cemetery; that the portion of said property to which petitioners are entitled under the terms of said agreement and as beneficiaries of said trust contains the dwelling house and other buildings on said tract, and lies along said Big Bend Road for its entire frontage, while that to which said Lloyal M. Burton and Rosalyn R. Burton are entitled under said agreement contains no house, and lies mostly behind other property, more than 200 feet away from said Big Bend Road (Rec. opposite p. 116, Plaintiffs' Exhibit C; also Rec., pp. 90, 91 and 74, 75).

Petitioners charge that the trial Court aided this scheme on the part of plaintiffs by denying petitioners their said federal constitutional rights and by nullifying the statute of frauds of Missouri and refusing to apply the well-settled principles of equity to the consideration of the rights of petitioners as beneficiaries under said trust agreement; and that the Supreme Court of Missouri, in affirming said decree of the trial Court, denied to peti-

tioners the equal protection of the laws and deprived them of their property without due process of law, contrary to said amendments to the Constitution of the United States.

#### IV.

#### **Errors Below Relied Upon Here; Summary of Argument.**

The points petitioners urge on this Court are in summary form as follows:

1. The State of Missouri denied the petitioners the equal protection of the laws by divesting them of property rights which had become vested in them as beneficiaries under a trust agreement in the same proceedings and under similar circumstances in which similar rights of other beneficiaries under said agreement were upheld and confirmed.

2. The State of Missouri deprived the petitioners of their property without due process of law by failing to apply well-settled principles of equity jurisprudence, which had been established by consistent rulings of the highest court in Missouri over a long period of years, to the facts and circumstances in evidence in this case relating to the property rights of the petitioners.

3. The State of Missouri deprived petitioners of their property rights without due process of law by failing to apply and enforce the Statute of Frauds, a valid and judicially approved law of the State of Missouri, providing, that no contract for the sale of lands by an agent shall be binding upon the principal, unless such agent is authorized in writing to make said contract; and that no action shall be brought upon any agreement for the sale of lands, or an interest in or concerning them, unless the agreement upon which the action shall be brought, or some memorandum thereof, shall be in writing and signed

by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

4. The State of Missouri deprived the petitioner, Sarah R. Hays, of her property rights without due process of law by awarding said rights to the respondents without compensation therefor to said petitioner.

5. The decree of the Court, in effect, used the power of the State of Missouri to assist in consummating a scheme unlawfully to prevent petitioners, solely because of their race and color, from owning and occupying property fronting on a public street and not covered by any restrictive covenants against the use and ownership thereof by members of the Negro or colored race.

6. Specific performance on the ground of equitable estoppel cannot lawfully be decreed in reference to property owned by the entirety where one of the owners had no knowledge of the existence of her property rights at the time of the negotiations for the sale thereof, or of said negotiations, and did not concur in or ratify the acts of the other owner by the entirety.

### POINT I.

The State of Missouri denied petitioners the equal protection of the laws by divesting them of property rights which had become vested in them as beneficiaries under a trust agreement in the same proceedings and under similar circumstances in which similar rights of other beneficiaries under said agreement were upheld and confirmed.

The rights of all of the defendants below claiming an interest in the lands in question, including the petitioners herein, were determined by the agreement signed between John W. Hays and Lloyal M. Burton, December 20, 1940 (R. pp. 137, 138), whereby Burton and his wife were

to take title to the entire tract and hold the same until a survey thereof should be made and then deed the western two and one-half acres thereof to the petitioners herein, as husband and wife, retaining for the Burtons, as husband and wife, the eastern two and one-half acres of said tract, and assuming and agreeing to pay the incumbrance, taxes and expenses of upkeep on said tract, each party by the entirety one-half thereof. When that agreement was signed by John W. Hays and Lloyal M. Burton, the trust provided for therein became irrevocable except by the consent of all the beneficiaries thereunder.

Perry on Trusts, Vol. 1, Secs. 259, 268.

Roberts v. Taylor, 300 Fed. 257, 260.

McPheeters v. Scott Co. Bank (Mo. Sup.), 63 S. W. (2d) 456; and cases cited.

In re Soulard's Estate, 141 Mo. 642, 662.

Under the above cited authorities, especially those decided by the Supreme Court of Missouri, it did not make any difference whether the petitioner, Sarah R. Hays, knew she was a beneficiary under the agreement between her husband and Lloyal M. Burton or not. Her property rights in the lands in question became vested immediately upon the execution of said agreement and the actions of Burton in carrying out its provisions. It follows that the occupation of the premises by Burton and his wife was not only as owners of the portion of the property which belonged to them under the agreement, but also as trustees for the other beneficiaries thereunder, and with the duty to preserve said property and protect the rights of the other beneficiaries therein.

Since the deed from Marie Halbrecht to Lloyal M. Burton and his wife (R. pp. 104, 105) had not been placed of record before the earnest money contract signed by Marie Halbrecht and H. J. Gannon, February 3, 1941



(R. pp. 45, 48), all of the beneficiaries under the agreement of December 20, 1940, were in the same situation regarding their ownership of or interest in said property, so far as notice to prospective purchasers were concerned. The unrecorded deed to the Burtons did not protect them from purchasers of the property any more than the other beneficiaries under said agreement were protected.

Secs. 3426 and 3427, R. S. of Mo. 1939.

All of said beneficiaries were in the same situation as regards the question of equitable estoppel against them, except that the petitioner, Sarah R. Hays, did not have any knowledge of the existence of the trust agreement (R. pp. 211, 212), nor did she know of the negotiations being carried on for the purchase of the property by agents of the respondents (R. pp. 58, 217).

Under the facts disclosed by the evidence in this case, none of the beneficiaries under said trust agreement could be estopped to assert their ownership and right to an interest in said property, because respondents had knowledge of the true ownership of said property and knowledge of facts sufficient to put them on inquiry, and they failed to make such inquiry which would have disclosed the true ownership of the property, and that Marie Halbrecht did not own the same, and that neither she nor Harry J. Gannon had any authority whatsoever to make a contract for the sale of the same.

Crary v. Dye, 208 U. S. 515.

Preuse v. Schmidt, 156 S. W. (2d) 919.

Woodbury v. Conn. Mut. Life Ins. Co., 166 S. W. (2) 552, 555.

Johnson v. Moore, 143 S. W. (2d) 254, 256.

McBride R. Co. v. Grace, 15 S. W. (2d) 957-960.

Shell v. Conrad, 153 S. W. (2d), loc. cit. 387, 388.

The decree of the Circuit Court and the affirmance of the same by the decision of the Supreme Court of Missouri, under the circumstances in evidence in this case and the applicable principles of law announced in the foregoing authorities, constitutes the denial of the equal protection of the laws to the petitioners on the part of the State of Missouri.

Louisville Gas Co. v. Coleman, 277 U. S. 32, 37.

Coolidge v. Long, 282 U. S. 582, 597.

16 C. J. S., Sec. 567, p. 1141.

It is submitted that the situation here is that, under the same or similar conditions, differing only in degree but not in kind, the State of Missouri has confirmed and upheld property rights of some of the beneficiaries under a trust agreement which is the source of the rights of all the beneficiaries, while denying those identical rights to others of them in the same proceedings.

## POINT II.

The State of Missouri deprived the petitioners of their property without due process of law by failing to apply the well-settled principles of equity jurisprudence which had been established by consistent rulings of the highest Court in Missouri over a long period of years, to the facts and circumstances in evidence in this case relating to the property rights of petitioners.

"Due process of law in each particular case means an exertion of the powers of government as the settled maxims of law permit or sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one being dealt with belongs."

Story on the Constitution (5th Ed.) Sec. 1945.

The prohibition against depriving any person of life, liberty or property without due process of law applies to each of the branches of the State government.

Chicago, Burlington & Quincy R. R. Co. v. Chicago,  
166 U. S. 226, 227.

The Supreme Court will not hesitate to exercise its jurisdiction to enforce this constitutional guarantee.

Buckhalter v. New York, 319 U. S. 427, 429.

### POINT III.

The State of Missouri deprived the petitioners of their property without due process of law by failing to apply the Statutes of Frauds, a valid and judicially approved law of the State of Missouri, providing that no contract for the sale of lands made by an agent shall be binding upon the principal, unless such agent is authorized in writing to make said contract; and that no action shall be brought upon any agreement for the sale of lands, or an interest in or concerning them, unless the agreement upon which the action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

Rev. Stat. of Missouri 1939, Sec. 3354.

### POINT IV.

The State of Missouri deprived the petitioner, Sarah R. Hays, of her property rights without due process of law by decreeing specific performance against her and awarding her property to the respondents without compensation therefor to said petitioner.

See: Decree of Circuit Court (R. pp. e, f).

Opinion of Supreme Court (R. pp. 302-304).

### POINT V.

The decree of the Court, in effect, used the power of the State of Missouri to assist respondents in consummating a scheme unlawfully to prevent petitioners, solely because of their race and color, from owning and using property fronting on a public highway and not covered by any restrictions against them, on account of their race and color, they being members of the Negro or colored race, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States.

The evidence shows that the western two and one-half acres of the land in question fronts in its entire length along Big Bend Road and that the dwelling house and all the out-buildings and tourist cabins are on this portion, while the eastern two and one-half acres of the tract lie mostly behind other property, about two hundred feet from said road, and have no buildings thereon (R. pp. 137, 138).

The Court will take judicial notice of the fact that property abutting for several hundred feet along a public street, on which are located a brick dwelling, and other buildings, is worth more than property not abutting said street and having no buildings thereon, even when said vacant property joins said western portion of the same tract of land.

### POINT VI.

Specific performance based on equitable estoppel cannot lawfully be decreed in reference to property owned by the entirety, where one of the owners had no knowl-

edge of her rights in said property, or of the negotiations therefor, and did not concur in or ratify the acts of the other owner in reference thereto.

Hernandez v. Prieto, 162 S. W. (2d) 829, 831.

Wilson v. Power, 155 S. W. (2d) 502.

Magulson v. Stern, 148 S. W. (2d) 144.

Hartford Fire Ins. Co. v. Bleedson, 132 S. W. (2d) 1066.

Baker v. Lamar, 140 S. W. (2d) 31.

30 C. J., p. 569, par. 102.

## CONCLUSION.

We respectfully submit that the authorities cited under the foregoing points amply state the equity rules of decision which should have been applied to the evidence in this case. There is no doubt about both Rupp and Bernine having knowledge of acts sufficient to have put them on inquiry. Burton and his wife lived across the road two hundred and fifty feet from where Bernine went in the cemetery gate each day. They were trustees under the agreement with petitioner John W. Hays, and in charge of the property, both as beneficiaries under that agreement and as trustees for Hays and his wife, with the duty to protect and safeguard their interests in the property. If, as the Court says in its opinion, "Burtons would, no doubt, have reasonably disclosed that they were in possession and claimed full legal title under an unrecorded deed from Marie Halbrecht," that would have been sufficient to notify the respondents that Marie Halbrecht was not the owner. But the law presumes a trustee will do his duty, not that he will fail to disclose his cestui que's interest when he finds a prospective buyer of the trust property making inquiry as to its ownership. Mr. Rupp was so little concerned about who owned the property that, although the earnest money contract bore the strangest wording he had seen, he never even asked Gannon to see the power of attorney he testified Gannon told him he had (R. pp. 40, 41). Neither did he inquire, when he saw that Marie Halbrecht was a woman, and not "a man in the office," to whom Gannon had sold his interest.

"Notice is the equivalent of knowledge of all that would be learned by reasonable inquiry."

Johnson v. Moore, 143 S. W. (2d) 254, 256, and cases cited.

The only difference between the circumstances of the four beneficiaries under the agreement is that of lack of information on the part of petitioner, Sarah R. Hays, and she received nothing at the hands of the Court, although her interest became vested at the same time as that of the other beneficiaries.

Was she denied the equal protection of the law by the courts of Missouri? If so, the prohibition in the Fourteenth Amendment has been overridden by the State.

Was she deprived of her property without due process of law? If so, then the other prohibition in the amendment mentioned has been overridden, as well as that in the Fifth Amendment. We believe that both of these questions must be answered in the affirmative. If answered affirmatively, it follows that this Court has jurisdiction and, as said in *Buckhalter v. New York* (319 U. S. 429):

"Where this requirement has been disregarded, the Court will not hesitate to exert its power to enforce the constitutional guarantee."

That was a criminal case, but the amendment does not distinguish between criminal and civil proceedings as regards the prohibition. It says: "Life, liberty or property," and this Court has enforced that prohibition in all manner of cases.

The Burtons had as much notice of what was going on as Hays had. He told them. He was their agent to file the deed from Marie Halbrecht. But passing all that: was the husband of petitioner, Sarah R. Hays, and they held by the entirety under the trust agreement. His acts, not concurred in by her, or ratified, could not dispose of her property or bind her in reference thereto in any manner.

We respectfully submit that the constitutional prohibitions have been breached in the instances pointed out in the Brief, and that the authorities cited enunciate rules of decision which sustain our contention. We believe that the considerations of public justice require that this Court issue its writ of certiorari, and review and reverse the decision of the Missouri Supreme Court in this case.

GEO. L. VAUGHN,  
CHARLES H. HOUSTON,  
*Attorneys for Petitioners.*







DEC 26 1944

CHARLES ELMORE OROPLEY  
CLERK

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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944.

JOHN W. HAYS and SARAH R. HAYS,  
Petitioners,

vs.

CATHERINE FARRINGTON, PARKER M.  
WOODS, WILLIAM L. BECKETT,  
WALTER M. WARREN and LYMAN E.  
WARREN,

Respondents.

No. 731.

## BRIEF OF RESPONDENTS IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI.

SAMUEL H. LIBERMAN,  
506 Olive Street,  
St. Louis (1), Missouri,  
Attorney for Respondents.



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**BRIEF OF RESPONDENTS IN OPPOSITION TO  
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---

**OPINION BELOW.**

The opinion of the Supreme Court of Missouri, as yet not officially reported, is reported in 182 S. W. (2d) 186.

**JURISDICTION.**

The opinion of the Supreme Court of Missouri was delivered, and the judgment entered on July 3rd, 1944 (R. 292 and 305).

The said judgment became final upon the entry of an order on September 5th, 1944, overruling the motion of petitioners for a rehearing and to transfer the cause to the Supreme Court en banc (R. 305-306).

The petition for writ of certiorari filed herein does not contain the "statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question" required by Rule 38, par. 2, of this Court.

The brief filed in support of the petition invokes the jurisdiction of this court under Section 237 (b) of the Judicial Code as amended by act of February 13th, 1925 (43 Stat. 937, 28 U. S. C. 344b). The reference in said brief to jurisdiction is general in terms and fails to specify with particularity the provisions or portions of the statute relief upon by petitioners.

From the argument made in the brief of petitioners, it would appear that their claim of jurisdiction in this court is based upon the ground that a title, right, privilege or immunity under the Fourteenth Amendment to the Constitution of the United States was specifically set up or claimed by them and denied in the court below, it being the contention of the petitioners in their brief that they were denied the equal protection of the law and deprived of their property without due process of law by the decree of the state court.

### **QUESTIONS PRESENTED.**

The petition for writ of certiorari does not contain a statement of the "questions presented" required by Rule 38, par. 2, of this court. Nor does a statement of the "questions presented," eo nomine, appear in the petitioners' brief.

In the view of respondents, the questions presented by the petition for the writ are as follows:



(1) Does this court have jurisdiction to review the judgment of the Supreme Court of Missouri affirming the decree below, awarding to the respondents specific performance of a contract for the conveyance of land against the petitioners to the extent of their interest therein, where such judgment is predicated upon a determination by the state court:

(a) That under the facts and circumstances in evidence an equitable estoppel was operative as to the petitioner, John W. Hays.

(b) That the respondents were not chargeable with notice as a matter of law of the undisclosed interest of petitioner Sarah R. Hays.

(c) That the rights acquired by respondents under a written contract with the holder of the record title were superior to the rights, if any, acquired by petitioner Sarah R. Hays under an unrecorded instrument to which she was not a party and which she had not accepted.

(d) That the Missouri Statutes of Frauds was not applicable.

(2) Does this court have jurisdiction to review the judgment of the Missouri Supreme Court by reason of the fact that the trial court denied relief to the respondents as against co-defendants of the petitioners in respect to the interest of the said co-defendants in the real estate.

### **STATEMENT OF THE CASE.**

The action below was a suit in equity filed by the respondents in the Circuit Court of St. Louis County, Missouri, against Marie Halbrecht, Lloyal M. Burton, Rosalyn R. Burton and the petitioners herein, John W. Hays and Sarah R. Hayes, his wife, to obtain a decree vesting title in the respondents to a tract of land situated in St. Louis County, pursuant to a written contract for the purchase

of said land signed by Catherine Farrington, as the agent and nominee of the other respondents, and by defendant Marie Halbrecht as record owner of said property and H. J. Gannon as agent for the owner.

At the time Marie Halbrecht signed the contract of sale, she was the holder of the record title. After the contract of sale was signed, the petitioner John W. Hays filed for record a deed theretofore executed by Marie Halbrecht conveying the property to Lloyal M. Burton and Rosalyn R. Burton, his wife.

The trial court found the issues in favor of the respondents and against the petitioners and decreed that the respondents were entitled to a conveyance of the interest of the petitioners in the land in question consisting of the western half thereof. The issues were found against the respondents and in favor of the co-defendants, Lloyal M. Burton and Rosalyn R. Burton, and relief was denied to the respondents as against the Burtons and their interest in the property (Decree, R. 271-278).

From this decree the petitioners appealed to the Supreme Court of Missouri. No appeal was taken by the Burtons nor by the respondents.

The decree of the Circuit Court was affirmed by the Supreme Court of Missouri.

The facts are fully and fairly set forth in the opinion rendered by the Supreme Court of Missouri (R. 292-305).

The issues in the trial below as between the respondents and the petitioners were framed upon the second amended petition of the respondents (R. 4-11), the separate answer of petitioner Sarah R. Hays (R. 15-17), the separate answer of petitioner John W. Hays (R. 17-20), and the reply of plaintiffs thereto (R. 20). No federal title, right, claim, privilege, or immunity was asserted by either of the petitioners in their respective answers to the second amended petition of the respondents.

The first reference in the record to any purported federal question appears in the motion of the petitioners for new trial, in the tenth ground thereof, reading as follows (R. 281):

“Defendants say that the judgment of the court deprives them, and each of them, of their property without due process of law, and denies to them, and each of them, the equal protection of the laws, contrary to the Fifth Amendment of the Constitution of the United States and the Fourteenth Amendment thereof, and contrary to the ‘due process’ and ‘equal protection’ clauses of the Constitution of Missouri.”

The motion for new trial was overruled by the trial court without opinion. Upon the appeal to the Supreme Court, the sole reference to a purported federal question in the assignment of errors is found in assignment VIII, reading as follows (R. 290):

“The finding and decree of the court, under the circumstances in evidence in this case, are contrary to the well-settled law of this state, and contrary to its statute of frauds, and, in effect, deprives these appellants of their property rights, without due process of law and denies to them the equal protection of the laws, contrary to the 5th and 14th Amendments of the Constitution of the United States, and contrary to Section 30 of Article II of the Constitution of Missouri.”

The opinion of the Supreme Court does not deal with the alleged federal question and is based upon the following conclusions of the Supreme Court:

(1) The second amended petition stated facts sufficient to constitute a cause entitling the respondents to a decree upon the principles of equitable estoppel (R. 297-300).

(2) Petitioner John W. Hays, by reason of his conduct, was estopped from denying the authority of Marie Hal-

brecht, the record owner, to sign the contract of sale and knowledge by respondents that petitioner John W. Hays had an interest in the property did not operate to prevent the estoppel because John W. Hays actively participated in the sale by Marie Halbrecht (R. 300-302).

(3) Respondents had no knowledge of the interest of petitioner Sarah W. Hays and constructive notice of such interest was not attributable to the respondents because of the fact that the co-defendants, Lloyal M. Burton and Rosalyn R. Burton, were in possession of the premises (R. 302-305).

(4) Respondents were not precluded from obtaining relief against petitioner Sarah R. Hays upon the ground that she had not authorized Marie Halbrecht or H. J. Gannon to sign the contract of sale, or upon the ground that the contract was invalid as to her by reason of the statute of frauds, or upon the ground that there was an absence of mutuality of remedy (R. 303).

(5) That the contract under which petitioner Sarah R. Hays claimed imposed burdens, in addition to benefits, and her acceptance thereof could not be presumed, in view of the fact that she was not a party to said contract and did not furnish any of the consideration (R. 304).

(6) That it was unnecessary to determine the extent of the rights acquired by petitioner Sarah R. Hays because the rights acquired by respondents under a contract with the holder of the record title were superior to the rights, if any, of Mrs. Hays, which were unknown to the respondent (R. 304).

## SUMMARY OF THE ARGUMENT.

### I.

The petition should be dismissed because it does not comply with Rule 38, par. 2, of the rules of this Court in that it does not contain the required statement of jurisdiction and the required statement of questions presented.

### II.

This Court does not have jurisdiction to review the judgment of the Supreme Court of Missouri because:

(a) The judgment of the Missouri Supreme Court is based upon the determination of purely local questions of law.

(b) The alleged error based upon the claim that the Missouri Supreme Court failed to follow well-settled principles of law does not give rise to a federal question.

(c) No federal question arises out of the fact that equitable relief was denied as to co-defendants but granted as against the petitioners.

### III.

This Court does not have jurisdiction to review the judgment of the Missouri Supreme Court in the absence of an affirmative showing by the record that a federal question of substance was decided, or that the decision of the federal question of substance was necessary to a determination of the cause.

## ARGUMENT.

### I.

Rule 38, par. 2 of the Rules of this Court, provides that a petition for the review of the decision of a state court on writ of certiorari shall contain, among other requirements, the following:

“ \* \* \* a statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question (See Rule 12, par. 1); the questions presented  
\* \* \* ”

The rule further declares that a failure to comply with the requirements thereof will be a sufficient reason for denying the petition.

The petition filed herein does not contain a statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgment of the Supreme Court of Missouri, nor does it set forth the questions presented by the application for the writ.

The petition does not refer distinctly to the statutory provisions believed to sustain the jurisdiction of this Court; does not set forth the date of the judgment of the state court; does not show that the nature of the case and the rulings of the state court were sufficient to bring the case within any jurisdictional provisions relied on; does not cite any case or cases believed to sustain the jurisdiction; and does not include a statement of the grounds upon which it is contended that the questions involved are substantial.

Furthermore, the petition does not specifically set forth the various stages at which the attention of the state court was directed to the claimed federal question, nor the rulings of the court thereon.

It is true that in the supporting brief,, the petitioners invoke, as the basis of this court's jurisdiction, Section 237b of the Judicial Code, 43 Stats. 937, 28 U. S. C. 344b (Brief, p. 10).

This reference, however, is general in nature and does not even point out the specific portions of the statute deemed applicable.

This Court has held that the brief is not to be deemed a part of the petition. **General Electric Talking Pictures v. Western Electric Co.**, 304 U. S. 175, 82 L. Ed. 1273, 58 S. Ct. 849.

The requirements of the rule hereunder discussion are not based upon considerations of mere convenience to this Court. The failure of the petition to substantially comply with the requirements of the rule justifies the denial of the petition.

Under the practice prevailing in the Supreme Court of Missouri, errors assigned but not noticed or relied on in the brief or supported by authority may be disregarded. In **Pence v. Kansas City Laundry Service Co.**, 332 Mo. 930, 59 S. W. (2d) 633, the Supreme Court of Missouri said:

“Counsel for appellant list other assignments of error which they have not seen fit to carry forward under the head of points and authorities except by the most general reference and this without citation of any supporting authorities or any elaboration or discussion whatever in the brief. This is not sufficient compliance with our Rule 15 as entitles these assignments to our consideration on appeal” (59 S. W. [2d], l. c. 639).

We submit it was incumbent upon the petitioners to affirmatively show by the record and in their jurisdictional statement that they had followed the Missouri practice and had effectively preserved in the Missouri

Court their assignment of error as to the alleged federal question by proper presentation in their brief and argument.

In **Hulbert v. City of Chicago**, 202 U. S. 275, 26 S. Ct. 617, 50 L. Ed. 1026, this Court said (202 U. S., l. c. 281):

“Nor was a right under the Constitution of the United States necessarily involved in the determination of the cause. And the supreme court was justified by its rulings in omitting the consideration of rights under the Constitution of the United States. According to the practice of the court, an error not assigned is not open to review. **Berry v. Chicago**, 192 Ill. 154, 155, 61 N. E. 498. Errors assigned but not noticed or relied on in the brief or argument of counsel, will be regarded as waived or abandoned. **Keyes v. Kimmel**, 186 Ill. 109, 114, 57 N. E. 851. And such rule of practice will be recognized by this court. **Erie R. Co. v. Purdy**, 185 U. S. 148, 153, 46 L. Ed. 847, 850, 22 Sup. Ct. Rep. 605.”

Had the petitioners set forth in their petition for certiorari the manner in which they presented to the Supreme Court of Missouri the alleged federal question in their printed brief and argument, this Court would have been apprised of the fact that under the points and authorities dealing with the alleged denial of due process and the equal protection of law, petitioners referred merely to the Fifth Amendment of the Constitution of the United States, Section 1 of the Fourteenth Amendment to the Constitution of United States, and Section 30 and Article II of the Constitution of Missouri without the citation of a solitary case decided by the court of any jurisdiction. This Court would have been further apprised that under that portion of the argument devoted to the alleged federal question, no authority was cited and the argument consisted of the mere bald conclusions of the petitioners.



II.

This Court has no jurisdiction to review the judgment of the state court which is predicated upon the determination of questions of general principles forming a part of the local law of the state.

In **Brinkerhoff-Faris Trust and Savings Co. v. Hill**, 281 U. S. 673, 74 L. Ed. 1107, 50 S. Ct. 451, this Court said:

“It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court’s power to review decisions of state courts is limited to their decisions on federal questions; and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles of doctrines established by previous decisions on which a party relied, does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court” (74 L. Ed. 1113).

The record, and the opinion of the Supreme Court of Missouri indicate clearly that relief was granted to the respondents against the petitioner John W. Hays upon the ground that an equitable estoppel existed by reason of his active participation in the negotiations conducted by Marie Halbrecht and H. J. Gannon for the sale of the property, culminating in the contract signed by Marie Halbrecht as the owner of the record and by Gannon as agent for the owner.

The determination of whether or not the facts and circumstances in the case were sufficient to cause an equitable estoppel to become operative as to the petitioner John W. Hays was purely a question of Missouri law.

It is immaterial so far as the jurisdiction of this Court is concerned whether or not the Supreme Court of Missouri correctly applied the doctrine of equitable estoppel to the facts and circumstances disclosed by the evidence.

This Court has recognized that where a case is tried

by the state court on the ground that an estoppel does or does not exist, jurisdiction to review the decision of the state court is not possessed by this Court. **Beals v. Cones**, 188 U. S. 184, 47 L. Ed. 435, 23 S. Ct. 275; **Weyerhauser v. State of Minnesota**, 176 U. S. 550, 44 L. Ed. 583, 20 S. Ct. 485.

The judgment of the Missouri court to the effect that an equitable estoppel may arise against the owner of real estate in favor of one who purchases from the holder of the record title, by reason of acts or omissions upon the part of the real owner, is in accord with the general law on the subject. (See 31 C.J. Secundum, "Estoppel," Sections 89-90 and 905.)

It is likewise in accord with the decision of this Court in **Kirk v. Hamilton**, 102 U. S. 68, 26 L. Ed. 79, wherein the doctrine was recognized by this court and wherein it was held that a court of equity has jurisdiction to compel the true owner to execute a conveyance where an estoppel is operative as to him.

In the state court, the petitioners alleged, as a defense to the action, the Missouri Statute of Frauds.

Whether or not the Statute of Frauds prevented the operation of the doctrine of equitable estoppel was purely a question of local law. The Missouri Court, in deciding adversely to the petitioner upon that issue, was applying the general rule. (See 50 A. L. R. 685.)

The judgment against petitioner Sarah R. Hays was predicated by the Missouri Court upon the ground that respondents had no notice of her rights under the contract made between her husband and Lloyal M. Burton; that she had not accepted the contract and her acceptance could not be presumed in view of the fact that the contract imposed burdens; and that the rights acquired by the respondents by virtue of their contract with the holder and the record owner were superior to the undisclosed equitable rights, if any, of Sarah R. Hays.

The Supreme Court of Missouri further held that possession by the Burtons under their deed did not constitute constructive notice of any rights that petitioner Sarah R. Hays might have had in and to the real estate.

All of the foregoing rulings were determinable solely upon general principles of law as interpreted by the local court.

Petitioner contends that the decision and judgment of the Supreme Court of Missouri was contrary to well-settled principles of law theretofore adopted by the Missouri court.

Should the truth of this statement be conceded, that fact itself does not create a federal question because no claim based on the Fourteenth Amendment arises out of the fact that a state court has overruled previous decisions. **Patterson v. Colorado**, 205 U. S. 454, 51 L. Ed. 879, 27 S. Ct. 556; **Tidal Oil Co. v. Flanagan**, 263 U. S. 444, 68 L. Ed. 382, 44 S. Ct. 97.

A consideration of the only assignment of error made in the Supreme Court of Missouri by the petitioners raising the so-called "federal question" clearly indicates that the real grievance of the petitioners is what they conceive to be the misapplication by the Missouri court of general principles of law in a manner inconsistent with earlier decisions of that court. This assignment of error (R. 290) reads as follows:

"The finding and decree of the Court, under the circumstances in evidence in this case, are contrary to the well-settled law of this state, and contrary to its statute of frauds, and, in effect, deprives these appellants of their property rights, without due process of law and denies to them the equal protection of the laws, contrary to the 5th and 14th Amendments of the Constitution of the United States, and contrary to Section 30 of Article II of the Constitution of Missouri."

It is apparent that the claim that petitioners were deprived of their property rights without due process of law and denied the equal protection of the law is hypothesized upon the premise that the findings and decree of the Court under the circumstances in evidence **in this case** were contrary to the well-settled law of the State of Missouri and contrary to the Missouri Statute of Frauds.

Every disappointed litigant feels that the court in his case has failed to apply the well-settled law of the state to the facts and circumstances in evidence, and if such claim were permitted to form the basis of a claim to protection under the Fourteenth Amendment, the appellate jurisdiction of this Court would be unlimited.

This Court held in **Milwaukee Electric R. W. and Light Co. v. State of Wisconsin**, 252 U. S. 100, 64 L. Ed. 476, 40 S. Ct. 306, that the 14th Amendment does not, in guaranteeing the equal protection of the law, assure uniformity of judicial decisions (252 U. S., l. c. 166).

Petitioners further urge that they are deprived of their property without due process of law and denied the equal protection of the law because of the fact that the judgment below was favorable to their co-defendants, Lloyal M. Burton and Rosalyn R. Burton.

In the Supreme Court of Missouri the petitioners assigned as error in the judgment below the alleged conflict in the decree arising out of the favorable decision to the Burtons, as compared to the adverse decision against the petitioners.

Whether or not the judgment or decree was invalid for conflict was a matter to be determined by the law of the state.

No authority is cited by petitioners in support of their claim that the alleged conflict constitutes the basis of a claim under the Fourteenth Amendment.

The Supreme Court of Missouri did not pass upon the propriety of the judgment as to the co-defendants Lloyal

M. Burton and Rosalyn R. Burton. The Burtons had not appealed from the judgment and the respondents had not appealed from that portion of the decree which was adverse to them. Consequently, there was no occasion for the Supreme Court of Missouri to review the findings and decree of the trial court in respect to the rights of co-defendants whose interests were not involved in the appeal.

Ample ground for distinguishing the difference in result as between the petitioners and as between their co-defendants are disclosed by the record.

The record affirmatively shows that the Burtons had received a conveyance vesting legal title to the property in them prior to the time that the respondents entered into their contract with the holder of the record title.

The Court further found, as a matter of fact, that no grounds for an equitable estoppel existed against the Burtons (R. 275).

Moreover, it appeared from the evidence that the Burtons were in possession of the premises under their unrecorded deed and from that the Court could have readily concluded that the respondents were chargeable with notice of the interest of the Burtons.

The petitioners in their brief herein assert that the Burtons claimed their interest in the real estate under the same contract which gave rise to the claim of Sarah R. Hays.

We have heretofore pointed out the facts and legal considerations which placed the Burtons in a situation different from that occupied by the petitioners.

This Court can only speculate as to the basis of the claims made by the Burtons, since the record does not contain the answer filed by the Burtons. The record, therefore, does not support the assertion made by the petitioners that the Burtons predicated their claim upon the same grounds as did the petitioners; but, on the contrary, the evidence discloses that the Burtons were in a wholly different position.

III.

The mere assertion of a federal title, right, privilege or claim itself does not confer jurisdiction upon this Court.

In **Southwestern Bell Telephone Co. v. Oklahoma**, 303 U. S. 206, 82 L. Ed. 751, 58 S. Ct. 428, this Court said:

“We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a court of a state that it must appear affirmatively from the record not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it” (82 L. Ed., l. c. 755).

In the case at bar, it is clear that no federal question was actually decided by the Supreme Court of Missouri.

It is likewise clear that the decision of the federal question was not implicit in the decision reached by the Supreme Court of Missouri. The decision of the Court was predicated wholly upon nonfederal grounds.

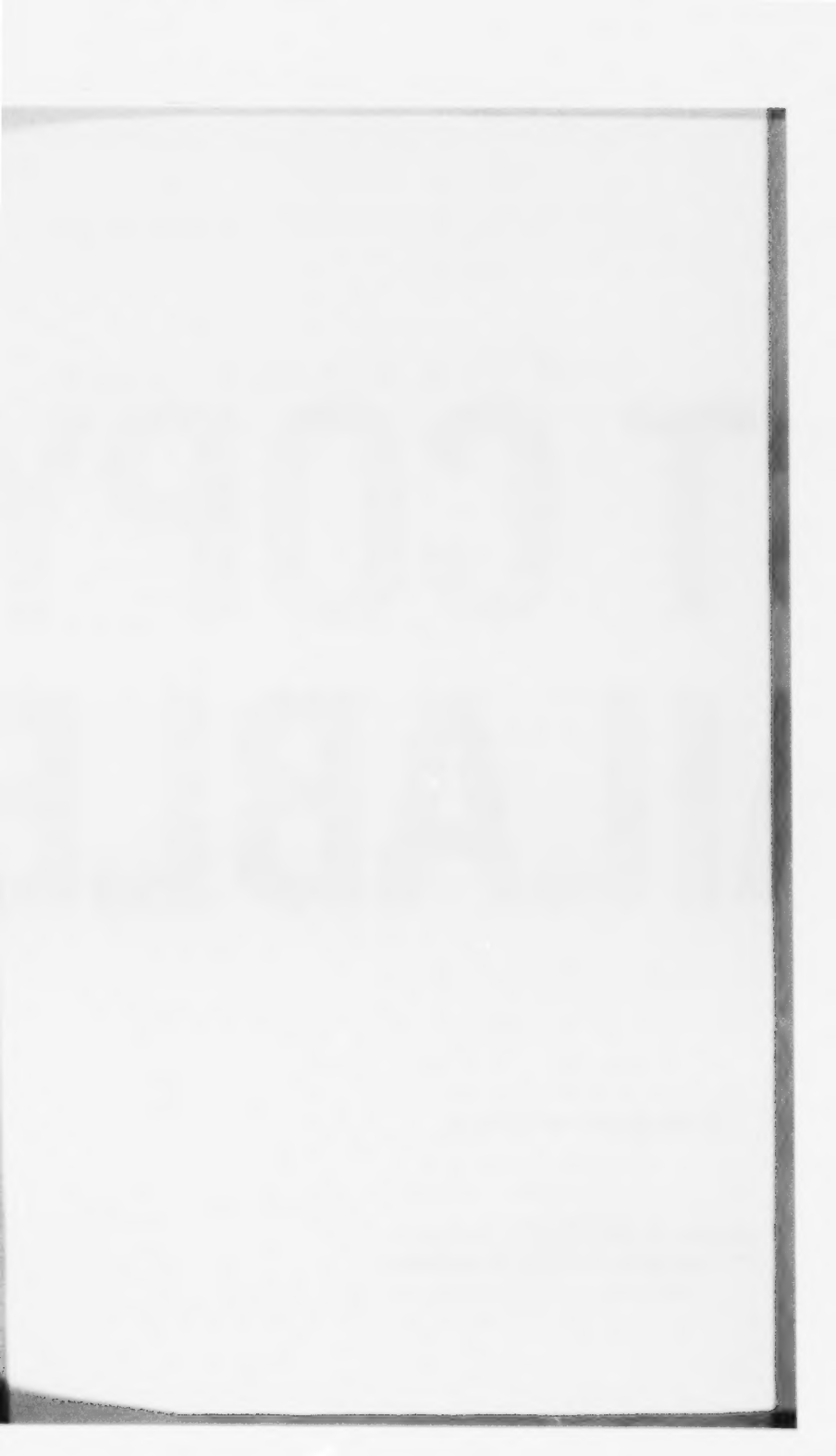
For the reasons above set out the petition should be denied.

SAMUEL H. LIBERMAN,

506 Olive Street,

St. Louis 1, Missouri,

Attorney for Respondents.







FEB 2 1945

CHARLES ELMORE GROPLEY  
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1944

No. 731

JOHN W. HAYS AND SARAH R. HAYS,  
*Petitioners,*

v.

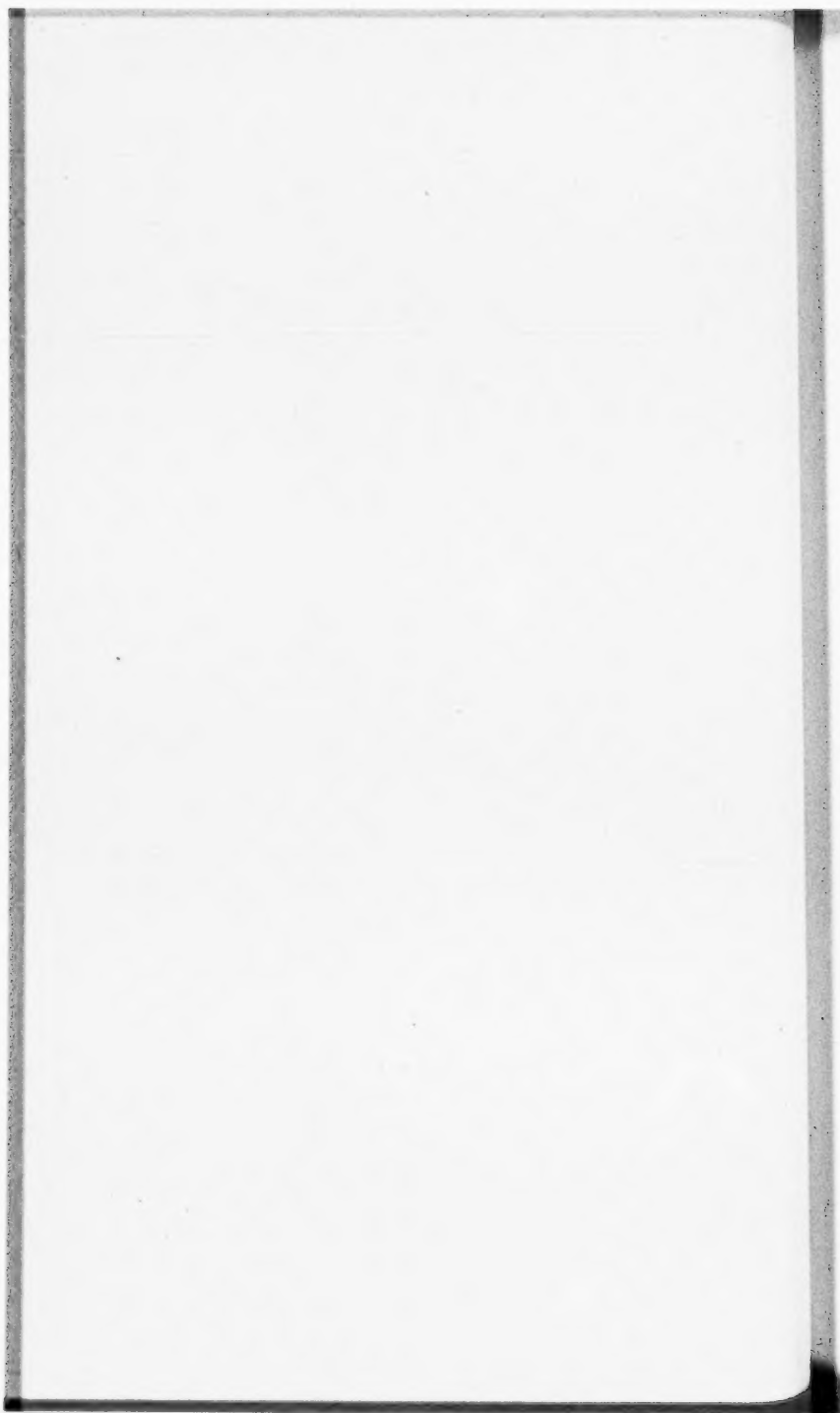
CATHERINE FARRINGTON, PARKER M. WOOD, WILLIAM L.  
BECKTOLD, WALTER M. WARREN AND LYMAN E. WARREN,  
*Respondents.*

## PETITION FOR A RECONSIDERATION OR REHEARING AND REASONS THEREFOR

GEO. L. VAUGHN  
2316 Market Street  
St. Louis, Missouri.

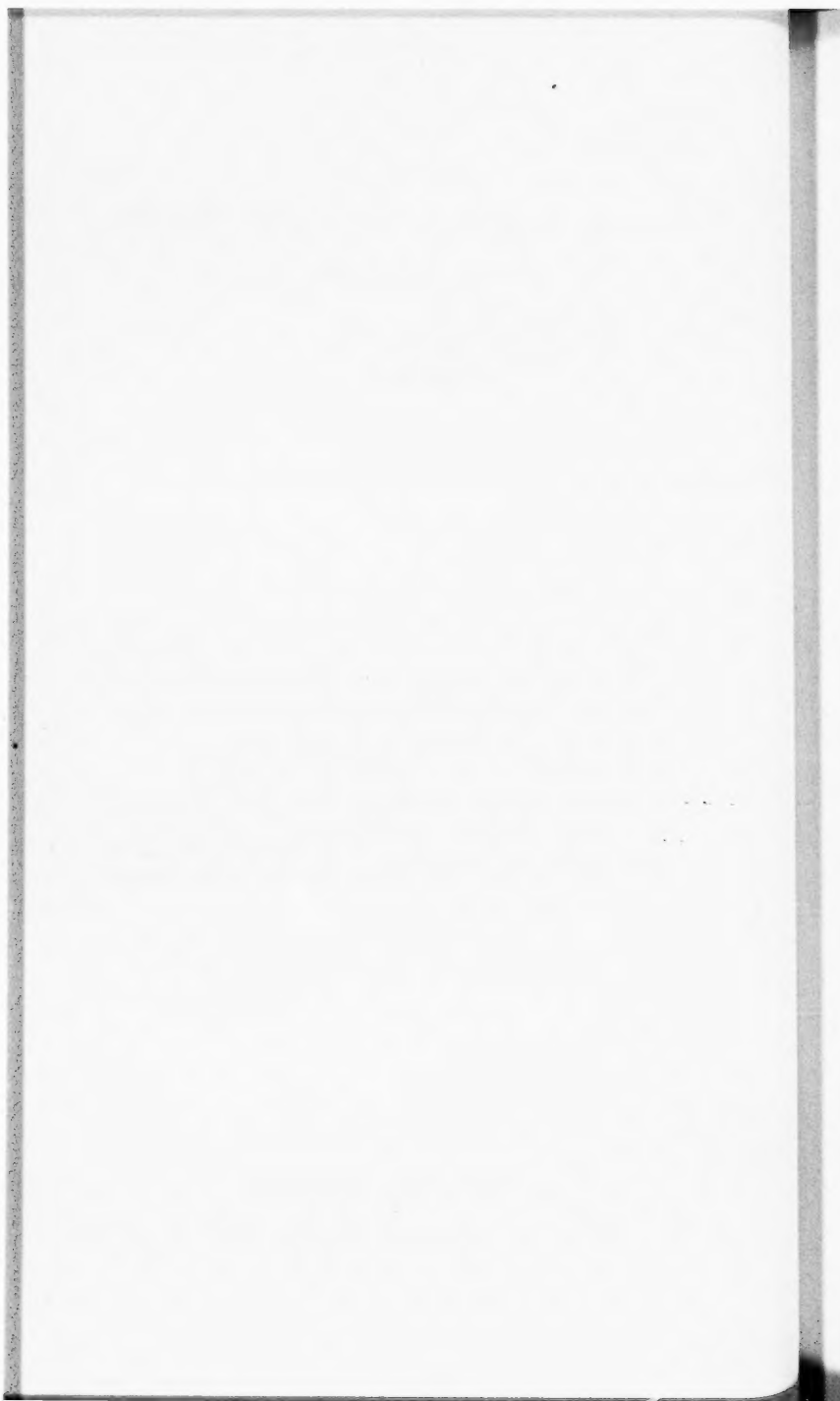
CHARLES H. HOUSTON  
615 F Street, N. W.  
Washington, D. C.

WILLIAM H. HASTIE  
615 F Street, N. W.  
Washington, D. C.



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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

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**No. 731**

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JOHN W. HAYS AND SARAH R. HAYS,  
*Petitioners,*

v.

CATHERINE FARRINGTON, PARKER M. WOOD, WILLIAM L.  
BECKTOLD, WALTER M. WARREN AND LYMAN E. WARREN,  
*Respondents.*

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**PETITION FOR A RECONSIDERATION OR  
REHEARING**

*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Come now the petitioners herein and present this petition for a reconsideration or rehearing and for the vacating of the judgment of this Court denying their Petition for a Writ of Certiorari to the Supreme Court of Missouri.

**JURISDICTION**

The judgment of this Court herein prayed to be reconsidered was entered on the 8th day of January, 1945. This petition for a reconsideration or rehearing is filed within twenty-five days from January 8, 1945, in accordance with Rule 33 of this Court.

**REASONS FOR PETITION**

- 1. The Record Clearly Reveals Denial of Equal Protection of the Law By a Decree of a State Court Arbitrarily Depriving Some Members of a Class of Property and**

**at the Same Time Securing Other Members of the Same Class in Property of Identical Derivation and Equitable Cognizance.**

The essential facts appear in the decree of the trial court and are not in dispute. By a deed dated December 16, 1940, and recorded December 24, 1940, Marie Halbrecht, a "straw party" employed as a clerk in the office of John W. Hays, "had acquired title to said property for the use and benefit of the defendant, John W. Hays, and had taken title thereto in her name at the special instance and request of said Hays as a matter of convenience for the said Hays." (R. 273.)

Thereafter, "on or about December 20, 1940, defendant, John W. Hays, entered into a written contract with the defendant, Lloyal M. Burton, under the terms of which the title to the said real estate was to be held in the name of the said Lloyal M. Burton and Rosalyn R. Burton, his wife, until such time as the real estate had been surveyed at which time the said defendants, Lloyal M. Burton and Rosalyn R. Burton, were to transfer by warranty deed to defendants, John W. Hays and Sarah R. Hays, his wife, the western two and one-half acres of said plot, retaining title to the Eastern two and one-half acres." (R. 274.)

Pursuant to this contract John W. Hays caused the record owner and straw party, Marie Halbrecht, to transfer title by deed to Lloyal M. Burton and Rosalyn R. Burton (R. 274). Subsequently, but before this deed was recorded, Marie Halbrecht contracted to sell the property to respondents, thus creating the controversy out of which this litigation rises.

The decree also recognizes the effect of the above outlined transactions prior to Marie Halbrecht's attempted sale to respondents as vesting in Lloyal M. Burton and Rosalyn R. Burton beneficial interest in the undivided eastern half of the property, and vesting in John W. Hays and Sarah R. Hays beneficial interest in the undivided western half of the property (R. 275, 276). The nature of these

interests will be considered hereinafter. But the important consideration at this juncture is that the property interests of Mr. and Mrs. Burton and Mr. and Mrs. Hays, recognized as such by the trial court, derive from a single contract and were created in similar language purporting to confer and conferring interests of identical character upon each of these four persons.

It is all important to the demonstration of the denial of equal protection of the laws here that a single instrument has used the same language to vest similar undivided interests in one tract of land in these four persons. In this way a class was defined, each member of which stood in the same position with reference to his interest in a single subject of property.

The nature of the interests thus created is clear and undisputed under the law of Missouri. Each of these four persons enjoyed an estate by the entirety in an undivided one-half of the tract. *Hernandez v. Prieto*, 349 Mo. 658, 162 S. W. (2d) 829 (1942) contains the most recent statement of well settled Missouri law concerning the creation of equitable estates by the entirety. There the court considered the effect of an agreement in which a husband contracted with the owner of land to buy property in the names of himself and his wife. However, title was in fact conveyed to the husband alone. Subsequent controversy having arisen concerning the interest of the wife, the court held that the wife enjoyed an equitable estate by the entirety, even though the husband paid the entire consideration for the property, saying:

"In this case the appellant purposely put his wife's name in the contract of purchase, thereby creating an equitable estate by the entirety. If it were true that the appellant paid the entire purchase price under the contract, a resulting trust in his favor would not arise, because he does not claim that he did not purposely cause his wife's name to be put in the contract of purchase. This is true even though he did not under-

stand the full legal effect of his act.'" (162 S. W. (2d) at 831.)

The State of Missouri recognizes the characteristic incident of an estate by the entirety that each tenant is seized of the whole estate and neither has power of encumbrance or alienation without the assent and concurrence of the other. "It is now well settled that where property is held by husband and wife as tenants by the entirety, any act affecting title must be by the joint act of both husband and wife." See *Wilson v. Tower*, 155 S. W. (2d) 502, 504 (Ct. App. 1941). Accord: *Baker v. Lamar*, 346 Mo. 258, 140 S. W. (2d) 31; *Magidson v. Stern*, 235 Mo. App. 1039, 148 S. W. (2d) 144.

Thus, Lloyal M. Burton, Rosalyn R. Burton, John W. Hays and Sarah R. Hays in the present case were so situated that no conduct of one of them could burden or alienate the estate or any portion of it without the consent of his or her spouse. Such was the situation when the straw party who had remained record owner attempted to sell the tract to the respondents. It is not even contended by respondents and nowhere is suggested in the record that any of the four beneficial owners other than John W. Hays had acted in any way which could be construed as acquiescence in the attempted sale. The Burtons expressly refused to sell and Sarah R. Hays did not even know of the negotiations with respondents.

With three members of a class thus in the same legal position, the trial court decreed that two of them, the Burtons, be protected in their estate by the entireties, but that the third, Sarah R. Hays, be divested of her estate by the entireties. "The equal protection clause means that the rights of all persons must rest upon the same rule in similar circumstances \* \* \* and \* \* \* applies to the exercise of all powers of the state which can affect the individual or his property." See *Louisville Gas & Electric Co. v. Coleman*, 277 U. S. 32, 37. Here the arbitrary differentiation



between persons similarly situated is so clear as to make it appropriate that the writ of certiorari issue.

**2. Petitioner Sarah R. Hays has been Deprived of Property Without Due Process of Law and Denied the Equal Protection of the Laws in that the State has Taken Her Property from Her Without Compensation.**

That Sarah R. Hays had an equitable estate by the entirety in the land in question has already been demonstrated. That she neither did anything adverse to her interest nor omitted anything which she should have done to protect her property, is also clear and undisputed in the record. That the respondents have contracted with Marie Halbrecht to buy the property for \$5,250.00 is sufficient to establish substantial value.

Yet, the decree of the trial court divesting Sarah R. Hays of her valuable property grants her neither any part of the purchase price nor any compensation whatever (R. 271 ff.). No act, no fault, no omission of Sarah R. Hays is charged, proved or found to have occurred. She has been deprived of her property arbitrarily and at the same time denied all compensation for it. If the Fourteenth Amendment is to have any meaning with reference to the property rights of the individual, it must protect him from such arbitrary taking and confiscation without any compensation. Cf.: *Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U. S. 226.

**3. Petitioners Have Made Timely and Persistent Claim of Invasion of Constitutional Right.**

The denial of constitutional right herein asserted resulted from the decree of the trial court. Thus, although the answer of Sarah R. Hays gave notice of reliance upon her estate by the entirety and the absence of authority to divest her of that estate (R. 16), there was no occasion to anticipate any constitutional issue. Promptly, however, after

decree petitioners, in paragraphs 7 and 10 of their motion for a new trial challenge the decree as a deprivation of constitutional rights.

"7. That the finding and judgment of the Court are in conflict in this regard, to-wit:

"That the court upholds the contract between Lloyal M. Burton and John W. Hays as the same relates to the interest of Lloyal M. Burton and Rosalyn R. Burton in said lands, and fails to uphold said contract as the same relates to the interest of the defendant Sarah Hays.

"19. Defendants say that the judgment of the court deprives them, and each of them of their property without due process of law, and denies to them, and each of them, the equal protection of the laws, contrary to the Fifth Amendment of the Constitution of the United States and the Fourteenth Amendment thereof, and contrary to the 'due process' and 'equal protection' clauses of the Constitution of Missouri." (R. 280, 281.)

Upon the overruling of this motion, petitioners noted and preserved appropriate exceptions (R. 282). They briefed and argued the constitutional issue before the Supreme Court of Missouri. Although the decision of that court does not discuss any federal question, the affirmance of the contested judgment necessarily involves a decision adverse to petitioners upon their constitutional challenge of the judgment's validity. A federal question thus raised, preserved and adjudicated is reviewable in this Court. Cf.: *Chicago, Burlington & Quincy R.R. v. Chicago*, *supra*.

## CONCLUSION

The record reveals state action so patently and grossly depriving petitioners of property in violation of the protection guaranteed by the Fourteenth Amendment that this Court should reconsider its refusal to review the action of the courts of Missouri.

Respectfully submitted,

GEO. V. VAUGHN  
CHARLES H. HOUSTON  
WILLIAM H. HASTIE

I, William H. Hastie, attorney for the petitioners, John W. Hays and Sarah R. Hays, do hereby certify that the foregoing petition for rehearing of this cause and for vacating the order denying a writ of certiorari is presented in good faith and not for the purpose of delay.

WILLIAM H. HASTIE